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**Prepared Statement of Ben Yamagata**  
**Coal Research Utilization Council**

**DOE Public Meeting**  
**Re: Loan Guarantee NOPR**  
**June 15, 2007**

The Coal Utilization Research Council (CURC) is an ad-hoc group, comprised of a diverse array of utilities, coal producers, manufacturers and constructors and state and university interests. The Council's mission is to promote and pursue research and development programs and financial incentives that lead to the cost-effective and environmentally acceptable use of coal. CURC supports clean coal technology development in the United States and worldwide and advocates the formation of credible and effective partnerships between industry and government to pursue the development of these important technologies.

We have reviewed the Department of Energy's Notice of Proposed Rulemaking (NOPR) with respect to the EPCA 2005 Title XVII loan guarantee program. Our comments specifically address a number of serious concerns we have identified with respect to various provisions of the NOPR. CURC has serious concerns regarding the following provisions of the NOPR:

**1. ONLY GUARANTEEING UP TO 90% OF 80% OF THE TOTAL PROJECT COST**

- DOE's NOPR proposes that a guarantee can cover only up to 90% of 80% of the total project cost.
- There is no basis in law or administrative practice for such a restriction.
- This restriction reduces the value of the loan guarantees significantly.

**2. NO PARI PASSU**

- DOE has misinterpreted the "superior rights" provision in EPCA Sec. 1702(g)(2)(B) as prohibiting pari passu financing structures and prohibiting any holders of non-guaranteed debt from recovering on their debt until DOE's claim is paid in full.
- Section 1702(d)(2) clearly permits pari passu financing (where senior lenders share equally and ratably in right of payment and in the security in proportion to their contribution to debt).

**3. NO STRIPPING**

- The NOPR prohibits the "stripping" of the guaranteed portion of the debt from the unguaranteed portion of the debt.
- There is no statutory basis for this restriction.
- The restriction only further limits the attractiveness of the loan guarantee program for potential lenders and constrains the availability of financing for eligible projects.

**4. CREDIT SUBSIDY COSTS AND ADMINISTRATIVE FEES PAID TO DOE MAY NOT BE INCLUDED WITHIN TOTAL PROJECT COSTS**

- The NOPR excludes the borrower-paid subsidy cost and administrative fees paid to DOE from the definition of project cost.
- These costs, in fact, are financing costs incurred and expended by the sponsors and should be included in the calculation of project cost.

**5. NO INDICATION OF HOW SUBSIDY COSTS WILL BE CALCULATED**

- The NOPR does not give any indication of how DOE will calculate the subsidy cost.
- The calculation of this cost should be entirely transparent so that the borrower is able to accurately calculate his costs.

**6. DEFINITION OF “GENERAL USE” FOR THE DETERMINING ELIGIBLE PROJECTS**

- The NOPR proposes that “general use” be defined either as: 1) a technology that has been ordered for, installed, or used in five or more commercial projects in the U.S. at the time the loan guarantee is issued; or 2) a technology that has been in operation in a commercial project in the U.S. for 5 years (beginning on the date that the technology is commissioned on the particular commercial project).
- The proposed definitions are not suitable as they relate to “projects” that will use technologies that have been in commercial use for other applications.

**7. RECEIPT OF OTHER FORMS OF GOVERNMENTAL ASSISTANCE**

- DOE states in the NOPR that it is desirable that each project receive only one form of governmental assistance.
- While receipt of other governmental assistance does not disqualify a project from receiving a Title XVII loan guarantee, DOE will consider the extent to which a project will receive other governmental assistance.
- Receipt of other governmental assistance should not limit a project’s eligibility for Title XVII loan guarantees.